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In the Supreme Court of the United States.

OCTOBER TERM, 1975.

No. 75-1775.

THE COMMONWEALTH OF MASSACHUSETTS,
PETITIONER,
v.
JACK B. WESTCOTT,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

Brief for Respondent in Opposition.

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Opinions Below.

The opinion and dissenting opinion of the Supreme Judicial Court are reported at Massachusetts Advance Sheets (1976) 696 through 716 and printed in petitioner's appendix A-1 through A-16.

Jurisdiction.

The petition states the jurisdictional requisites.

Question Presented.

Does a Massachusetts statute which forbids any person who has not been a legal resident of the Commonwealth for one year from dragging for migratory fish by beam or otter trawls in the coastal waters of Vineyard Sound during July, August, and September, draw a distinction between nonresidents and residents that violates the privileges and immunities clause or equal protection clause, or both, of the Constitution?

Statute Involved.

Act of February 20, 1923, c. 35, [1923] Mass. Acts and Resolves 17, *as amended by* Act of March 13, 1962, c. 219, [1962] Mass. Acts and Resolves 107.

> It shall be unlawful during the months of July, August and September for any person who has not been a legal resident of this commonwealth during the preceding year to use beam or otter trawls to drag for fish in that part of the waters of Vineyard Sound lying in the towns of Chilmark, Gay Head and Gosnold, and included between an imaginary line running from the extreme western point of Gay Head to the extreme western point of Nashawena Island and another imaginary line running from Cape Higgon to Tarpaulin Cove Light. Violation of this act

> shall be punished by a fine of not less than five hundred nor more than one thousand dollars.

Statement.

On September 5, 1973, Jack B. Westcott was arrested while dragging for scup and fluke by otter trawl in waters covered by the statute. Scup and fluke are migratory fish. The waters are navigable waters of the United States and coastal waters of Massachusetts.

At the time of his arrest Westcott was a resident of Point Judith, Rhode Island. He had not been a Massachusetts resident during the year preceding his arrest or the interdicted season. His boat, the SUZANNE, was registered out of Point Judith. It was owned without the Commonwealth.

On April 24, 1974, Westcott was tried and found guilty by the District Court of Dukes County. He appealed to the Superior Court.

On May 14, 1974, he moved to dismiss the action on the grounds that the statute violated the privileges and immunities and equal protection clauses of the Constitution. The parties submitted an agreed statement of facts on the motion (Respondent's Appendix, pp. 1-2).

On May 23, 1974, the Superior Court reported the question of law to the Supreme Judicial Court.

On March 12, 1976, the Supreme Judicial Court held that the statute violated the privileges and immunities clause, and directed the Superior Court to grant the motion to dismiss.

Argument.

I.

The Decision of the Supreme Judicial Court is Correct.

The Supreme Judicial Court based its decision upon *Toomer* v. *Witsell*, 334 U.S. 385 (1948). It rejected the Commonwealth's argument that the Submerged Lands Act, 43 U.S.C. §§ 1301 *et seq.* (the Act), had overruled that case and had reinstated the ownership theory of *McCready* v. *Virginia*, 94 U.S. 391 (1876). This holding is correct.

In *McCready*, a Virginia statute prohibited nonresidents from planting oysters in the beds of its tidewaters. The Court upheld the statute on the theory that the state owned the beds, the tidewaters, " . . . and the fish in them, so far as they are capable of ownership while running." 94 U.S. at 394.

In *Toomer*, a South Carolina statute excluded nonresidents from fishing for migratory shrimp in the marginal sea. The court held that the statute violated the privileges and immunities clause because it discriminated against citizens of other states for no substantial reason other than that they were citizens of other states. The court said in substance that a state cannot own free-swimming fish in the marginal sea. It characterized the ownership theory as legal shorthand for the power of a state " . . . to preserve and regulate the exploitation of an important resource." 334 U.S. at 402.

The Commonwealth's case in the Supreme Judicial Court turned upon two sections of the Submerged Lands Act. Section 1311(a) of the Act declares that "title" to the "natural resources" within "navigable waters within the boundaries of the respective States" is vested in the respective states. Section 1301(e) defines "natural resources" to include "fish."

The Commonwealth argued the Act thus vested ownership in the state of free-swimming fish in the marginal sea and overruled the holding in *Toomer*. Consequently, the Commonwealth concluded, since Vineyard Sound is a navigable water of Massachusetts, and since it owns the fish in those waters, it can prohibit nonresidents from fishing for these fish under the ownership theory of *McCready*.

The Commonwealth makes the same argument in its petition for certiorari.

The Supreme Judicial Court properly held that the Act does not have the effect the Commonwealth says that it does.

"The Act merely confirmed the States' pre-existing rights . . . by, in effect, quitclaiming all federal claims thereto." *Bonelli Cattle Co.* v. *Arizona*, 414 U.S. 313, 318 (1973).

Since *Toomer* predates the Act, it holds by necessary implication that prior to the Act the state had no ownership right in free-swimming fish in the marginal sea. The states did not have a preexisting right that could be confirmed by the Act.

The gist of *Toomer* is that free-swimming fish like free-flying birds cannot be owned in the wild. See, *Missouri* v. *Holland*, 252 U.S. 416, 434 (1920). The federal government did not have an ownership right which by the Act it could quitclaim to the states.

The ownership theory no longer underpins the power of a state to regulate its natural resources. Under modern thinking that power is part of the police power of the states. See, *Corsa* v. *Tawes*, 149 F. Supp. 771 (D. Md.), *aff'd*, 355 U.S. 37 (1957); *Kake* v. *Egan*, 174 F. Supp. 500, 502-504 (D. Alas. 1959), *aff'd sub nom. Metlakatla Indian Community, Annette Island Reserve* v. *Egan*, 362 P. 2d 901 (Alas. 1961), *aff'd sub nom. Kake* v. *Egan*, 369 U.S. 60 (1962). The ownership language in the Act should thus be read as "legal shorthand" for that power, at least in its application to fish swimming in the ocean.

The Commonwealth's reading of the Act would overrule the long line of cases following *Toomer*, and *Missouri* v. *Holland*, *supra*, or based upon their underlying concepts. See the opinion of the Supreme Judicial Court (Petitioner's Appendix A-3 and A-4).

The Commonwealth's position would lead to strange results. Free-flying birds above Vineyard Sound could not be owned, whereas free-swimming fish in Vineyard Sound could be. What then about flying fish, or diving birds?

The legislative history of the Act makes clear that the Congress did not intend the Act to overrule *Toomer*. 99 Cong. Rec. pp. 2563-2564 (1953) (Respondent's Appendix, pp. 7-14).

II.

There are No Conflicts in the Decisions of the Circuit Courts.

There is no conflict in the Circuit Courts about applying the decisions in *Toomer*, and *Missouri* v. *Holland*, *supra*.

There is no conflict in the Circuit Courts about the effect of the Submerged Lands Act on the point raised by the Commonwealth.

III.

The Question is Not Important and will Not Affect Others.

The Commonwealth says that twenty-two other statutes of nine states differentiate between the rights of residents and

nonresidents to take fish in coastal waters. This is the basis for two arguments.

The first argument is that the decision of the Supreme Judicial Court involves a novel federal question and would have a substantial *stare decisis* effect on these other statutes, such that this Court and not a state court should make the determination. There are three answers to this argument.

Prior decisions of this Court, not the decision of the Supreme Judicial Court, furnish the precedent.

If these other statutes come under constitutional attack, the courts can readily pass upon their constitutionality under *Toomer*. The law is so clear that a decision in this case would add nothing.

The only new point raised by the Commonwealth is the peculiar effect of the Submerged Lands Act for which it argues. That point may be novel but it is not substantial.

The second argument is that these other statutes suggest an equal protection as well as a privileges and immunities question. The Commonwealth says that *Douglas* v. *Seacoast Products, Inc.*, U.S.S.C. No. 75-1255, probable jurisdiction noted April 26, 1976, raises the first but not the second question so that *certiorari* should be granted in this case to round out the subject. There are two answers to this argument.

It is not clear that this Court necessarily noted probable jurisdiction in the *Douglas* case because of the equal protection question. That case also raises serious questions about preemption and abstention, either or both of which could be the reason for the noting of probable jurisdiction.

The only question in this case is the effect of the Submerged Lands Act. To the extent that that is a valid or substantial question, it can be answered completely in the *Douglas* case.

Conclusion.

The petition for certiorari should be denied.

Respectfully submitted,

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Dated: June 6, 1976

Appendix.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF DUKES, ss. SUPERIOR COURT.
No. 1530.

COMMONWEALTH OF MASSACHUSETTS
vs.
JACK B. WESTCOTT.

Agreed Statement of Facts.

1. Jack B. Westcott is the defendant in this action.

2. On September 5, 1973 Mr. Westcott was arrested by Michael Renahan, a resident of Chilmark, Massachusetts and an officer of the Department of Natural Resources of the Commonwealth of Massachusetts, for violation of Chapter 35 of the Acts of 1923 of the Commonwealth of Massachusetts, as amended, and filed a complaint against him in the District Court of Dukes County, a copy of which is attached hereto as Exhibit A. On April 26, 1974, Mr. Westcott was tried and found guilty of this violation is said District Court, and has taken an appeal to the Superior Court sitting in Dukes County.

3. On September 5, 1973 at the time of arrest, Mr. Westcott was dragging for fish, namely scup and fluke, which are migratory fish, by means of an otter trawl in a vessel owned without the Commonwealth of Massachusetts, to wit, the SUZANNE registered out of Point Judith, Rhode Island, bearing Registry Number 290327, in the waters covered by said Chapter 35 of the Acts of 1923 of the Commonwealth of Massachusetts, as amended.

4. Mr. Westcott had not been a legal resident of the Commonwealth of Massachusetts during the year preceding September 5, 1973, or for the year preceding July 1, 1973. He was then and is now a resident of Narragansett, Rhode Island.

5. The waters described in said Chapter 35 of the Acts of 1923 of the Commonwealth of Massachusetts, as amended, are navigable waters of the United States, as likewise are the waters covered by Chapter 158 of the Acts of 1936 of the Commonwealth of Massachusetts, as amended and by Section 99 of Chapter 130 of the General Laws of the Commonwealth of Massachusetts, as amended; copies are attached as Exhibits B, C and D.

6. Mr. Westcott if called as a witness would testify that the waters covered by Chapter 35 of the Acts of 1923 of the Commonwealth of Massachusetts, as amended, (as likewise are the waters covered by Chapter 158 of the Acts of 1936 of the Commonwealth of Massachusetts, as amended, and by Section 99 of Chapter 130 of the General Laws of the Commonwealth of Massachusetts, as amended) are good areas for fishing for migratory fish, such as scup and fluke, by beam and otter trawl and his freedom to fish there throughout the year, and to carry his catch of fish out of those waters and out of any coastal waters of the Commonwealth of Massachusetts which are simultaneously navigable waters of the United States in a vessel owned without the Commonwealth of Massachusetts, and which is not a common carrier, is and would be a valuable right to him.

PHILIP A. ROLLINS,
District Attorney.

GEORGE M. VETTER,
Attorneys for the Defendant.

May 14, 1974

DUKES COUNTY, ss. 19

I arrested the within named Defendant without a warrant on the A.D. 19 and have h in Court.

No. 20637

COMMONWEALTH WITNESSES
On Complaint Of

Michael A. Renahan

Jack B. Westcott
COMPLAINT
Chap. 35 Acts 1923
dragging for fish in closed waters

9-7-73
Plea N.G.
Continuance Oct. 19, 1973
Nov. 16, 1973
75 Feb. 74
April 19, 1974
April 20, 1974
Recognizance
Judgment Guilty
Sentence $500 fine

Appeal $100 PR to Spring Term

Def. found not/Indigent
_____Appointed
to represent defendant.

EXHIBIT A.

TO THE JUSTICES OF THE DISTRICT COURT OF DUKES COUNTY, holden at Edgartown, for the transaction of criminal business within the County of Dukes County.

Michael A. Renahan of Chilmark, in the County of Dukes County; in behalf of the COMMONWEALTH of MASSACHUSETTS on oath complains that Jack B. Westcott of 532 Land Hill Cove Road, Narraganset, R. I. on the 5th day of September in the year of our Lord one thousand nine hundred and seventy-three at Gosnold aforesaid, and within the Judicial District of said Court, not being a legal resident of the Commonwealth of Massachusetts during the preceeding year, did drag for fish by means of an otter trawl in that part of the waters of Vineyard Sound lying in the Town of Gosnold, and included between an imaginary line running from the extreme western point of Gay Head to the extreme western point of Nashawena Island and another imaginary line running from Cape Higgon to Tarpaulin Cove Light, in violation of Chapter 35 of the Acts of 1923 as amended against the peace of said Commonwealth and the form of the statute in such case made and provided.

MICHAEL A. RENAHAN.

DUKES COUNTY TO WIT:

TAKEN AND SWORN TO, at Edgartown, this 7th day of September in the year of our Lord one thousand nine hundred and seventy-three BEFORE SAID COURT.

THOMAS A. TELLER,
Clerk of the District Court of Dukes County.

EXHIBIT B.

ACTS OF 1923: CHAPTER 35.

AN ACT PROHIBITING DURING CERTAIN MONTHS OF THE YEAR THE USE BY CERTAIN PERSONS OF BEAM OR OTTER TRAWLS IN TAKING FISH FROM CERTAIN WATERS OF THE TOWNS OF CHILMARK, GAY HEAD AND GOSNOLD.

It shall be unlawful during the months of July, August and September for any person who has not been a legal resident of this commonwealth during the preceding year to use beam or otter trawls to drag for fish in that part of the waters of Vineyard Sound lying in the towns of Chilmark, Gay Head and Gosnold, and included between an imaginary line running from the extreme western point of Gay Head to the extreme western point of Nashawena island and another imaginary line running from Cape Higgon to Tarpaulin Cove Light. Violation of this act shall be punished by a fine of not less than five hundred nor more than one thousand dollars. (As amended, St. 1962, c. 219.)

EXHIBIT C.

ACTS OF 1936: CHAPTER 158.

AN ACT PENALIZING THE TAKING BY CERTAIN PERSONS OF FISH BY THE OTTER TRAWL METHOD FROM A CERTAIN AREA IN VINEYARD AND NANTUCKET SOUNDS.

Whoever, not being an inhabitant of this commonwealth, takes, attempts to take or assists in taking fish by the otter

trawl method from so much of the waters of Vineyard and Nantucket sounds as lies between a line connecting Gay Head and Cuttyhunk lights and a line extending north thirteen degrees west (true bearing) from Cape Pogue light to the mainland shall be punished by a fine of not less than twenty nor more than fifty dollars.

EXHIBIT D.

SECTION 99. Carrying Fish Out of the Commonwealth in Vessel or Smack Owned Without the Commonwealth.

Whoever, other than a common carrier, carries out of the commonwealth in any vessel or smack owned without the commonwealth any fish, except oysters, taken within the coastal waters, and whoever in any such vessel or smack takes any fish within the coastal waters for the purpose of carrying them out of the commonwealth, shall be punished by a fine of fifty dollars, and all fish so taken or carried shall be forfeited to the commonwealth and disposed of by the director for the best interests of the commonwealth. (1941, 598, § 1, effective Jan. 1, 1942.)

Addendum.

99 CONG. REC., PP. 2563-2564 (1953).

MR. COLMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows.

Amendment offered by MR. COLMER: On page 6, line 4, after the words "natural resources", insert the following: "subject to the condition that there shall be no unreasonable disparity between the treatment by a State or its grantees of its citizens and the treatment by such State or its grantees of the citizens of another State in the management, administration, leasing, controlling, developing, and use of the said national resources."

MR. COLMER. Mr. Chairman, on yesterday I addressed the House briefly on this subject, giving advance notice that I proposed to offer this amendment. In the brief time that I have, of course, I cannot go too much into the reasons and the need for this amendment. But the amendment is aimed at one thing and one thing alone. That is to reassert in this legislation what is already considered to be the law with reference to the use and taking of fish, shrimp, and other migratory marine life. Under section 2 of article 4 of the Constitution, there can be no disparagement in the way of treatment among citizens of one State against citizens of another State. We have had in this country, and particularly in my section, a great deal of confusion and chaos, particularly with reference to shrimp boats going from the waters of one state to the waters of another State. Sometimes attempts have been made to pass unreasonable laws requiring exorbitant licenses of the citizens of one State who may want to go into the waters of another State.

MR. WILLIS. Mr. Chairman, will the gentleman yield?

MR. COLMER. I yield.

MR. WILLIS. The gentleman is familiar with the Supreme Court decision involved in the Carolina situation with reference to shrimping. I understand his amendment goes no further than to simply spell out in this bill what the gentleman thinks the Supreme Court held in the matter of licenses and so on for shrimping and for the fishing industry as against one State vis-a-vis another State.

MR. COLMER. I thank my friend for his contribution. Our States adjoin and he knows of the problem there. My amendment merely spells out what the Constitution provides and what the Supreme Court in the South Carolina case, to which my friend referred, announced to be the law. The purpose of this — if you ask why we should have this amendment written into this bill — is to dispel any idea that this tidelands law under the broad terms of this bill with reference to resources would give one State the right to discriminate against the citizens of another State. I hope my friends, the chairman of the committee and of the subcommittee, will see fit to accept this amendment.

MR. CELLER. Mr. Chairman, will the gentleman yield?

MR. COLMER. I yield.

MR. CELLER. Does the State of Louisiana allow citizens of Mississippi to fish in Louisiana waters and vice versa. What is the need of the amendment then, if that is so?

MR. COLMER. I do not want to get into any argument here because there has been extreme controversy between the two States. Not only between those two States but between other States as well. For instance North Carolina and South Carolina and also between Texas and Louisiana and other States which I might mention. Two cases have gone to the Supreme Court. We want to spell out here that this does not grant any additional authority, or attempt to grant any additional authority. That is the purpose of this amendment. I cannot see why there should be any objection to it.

As I pointed out yesterday, migratory fish recognize no artificial boundaries. They travel in the open waters, and as I illustrated in my talk yesterday, there was a gigantic school of shrimp miles square, which was discovered off the coast of Florida about a year and a half ago. That school of shrimp was converged upon by boats from Virginia on the east and Texas on the west. These fishermen from the different States followed the shrimp as they slowly migrated across the waters of Florida, Alabama, Mississippi, Louisiana, and Texas and into the waters of Mexico.

THE CHAIRMAN. The time of the gentleman has expired.

MR. GRAHAM. Mr. Chairman, I rise in opposition to the amendment.

In the first place, Mr. Chairman, the words are entirely superfluous in view of the decision of the Supreme Court. In *Toomer* v. *Witsell* (334 U.S. 385, 393 (1947)), Mr. Justice Vinson, in the majority opinion, said:

In the court below *United States* v. *California* (332 U.S. 19 (1947)) was relied upon for this proposition. Here appellants seem to concede, and correctly so, that such is neither the holding nor the implication of that case; for in deciding that the United States, where it asserted its claim, had paramount rights in the 3-mile belt, the court pointedly quoted and supplied emphasis to a statement in *Skiriotes* v. *Florida* (313 U.S. 69, 75 (1941)).

Our position is that this matter is settled. This is a proposition which could not lead to discrimination on the part of one State against the others and thus open the door to endless litigation. We are opposed to it and ask that the amendment be defeated.

MR. COLMER. Mr. Chairman, will the gentleman yield?

MR. GRAHAM. I yield.

MR. COLMER. I did not get the citation of the case the gentleman read. Was that the South Carolina case?

MR. GRAHAM. That is the South Carolina case, the shrimp-boat case.

MR. COLMER. As I understand the gentleman — and I did not get everything he said —

MR. GRAHAM. I said it was the shrimp-boat case.

MR. COLMER. Of course the main thing I caught were the very unpleasant words that the gentleman rose in opposition, but I did not get the citation.

MR. GRAHAM. I said when the shrimp boats come in in South Carolina.

MR. COLMER. Now, if I understand the gentleman correctly, he takes the position that the provisions of my amendment are already in the law.

MR. GRAHAM. That is right; that is correct.

MR. COLMER. And there is no necessity for this. Then I asked the gentleman what objection there may be to a restatement of it here.

MR. GRAHAM. Just the same as we would not restate the Constitution; that is the law.

MR. COLMER. But the gentleman must realize that it would have a very powerful and deterrent effect upon these intrastate squabbles that have arisen in the past. I regret that the gentleman sees it necessary to oppose this amendment.

MR. GRAHAM. May I say to the gentleman from Mississippi [MR. COLMER] that our position is that the Constitution, of course, is superior to any law of any State, and that has already been decided, and the Supreme Court held as I have indicated. We think it is redundancy, unnecessary, and could serve no good purpose.

MR. MCCARTHY. Mr. Chairman, will the gentleman yield?

MR. GRAHAM. I yield.

MR. MCCARTHY. I think it important that we give attention to this amendment, because it does, I think, draw a line which may save us some trouble in the future. Right now

Minnesota is having trouble with South Dakota with regard to migratory birds. The South Dakotans refuse to let us hunt in South Dakota, and we do not know whether the Supreme Court will sustain us or not, but a provision such as this would have saved us the trouble that our duck hunters are experiencing.

MR. GRAHAM. But that is a matter of intrastate and interstate concern and does not apply to foreign waters.

MR. MCCARTHY. These will be interstate waters once the boundaries have been redefined.

MR. GRAHAM. Not altogether, no; there will be the broad ocean also.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi [MR. COLMER].

The question was taken; and on a division (demanded by MR. COLMER) there were — ayes 32, noes 77.

So the amendment was rejected.

MR. COLMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by MR. COLMER: On page 6, line 4, after the words "State resources," insert "subject to the condition that there shall be no unreasonable disparity between the treatment by a State or its grantees of its citizens and the treatment by such State and its grantees of the citizens of another State in the management, administration, controlling, use, licensing, and taking of fish, shrimp, and other migratory marine animal life."

MR. GRAHAM. Mr. Chairman, I make the point of order that the amendment is not in order because it is merely the same amendment offered at another place.

MR. COLMER. Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN. The Chair will hear the gentleman briefly.

MR. COLMER. Mr. Chairman, we disagree with the learned gentleman from Pennsylvania. The first amendment offered went to the whole question of resources affected; oil, minerals, and other matters. This merely goes to fish, shrimp, and other migratory marine life. I hope that the distinguished chairman of the committee will accept this amendment.

THE CHAIRMAN. The Chair believes that the amendment is different in wording; therefore overrules the point of order.

MR. COLMER. Mr. Chairman, of course, I realize what we are up against here today. I am not going to term it steamrollering as has been charged here today, but it is no different from any other proceedings that we have had here in the past. This is just another case of a legislative committee taking the position that the bill is sacred and there must not be any i's dotted or t's crossed.

This amendment is the same proposition that I argued here a moment ago but, as I pointed out in response to the Chair and in response to the objection of the learned gentleman from Pennsylvania, it only affects marine life, while my first amendment covered all resources. That is the point we are concerned about, that is the point that we wish to have restated if it must be restated so that we can stop so far as possible these interstate squabbles. We like to live in peace with our neighbors, we do not want to be squabbling with them and all we are asking here is, according to my ordinarily genial friend from Pennsylvania's contention, for a restatement that that be the law.

I hope that some of that milk of human kindness that pervades him ordinarily when he sits on the aisle will assert itself in his position of authority here and in his desire for protecting the sacredness of the committee bill as it is brought out. I hope the gentleman will accept the amendment; otherwise I realize fully that there is little hope of its adoption in view of what just happened on my first amendment.

But, Mr. Chairman, if this effort does prove to be futile as we have indicated we now suspect so far as the adoption of the amendment is concerned, it is nevertheless comforting to know that it has at least served the purpose of having made the record. And while the amendment may not prevail as part of the law, the debate will indicate conclusively that it is the opinion of the chairman of the Judiciary Committee of the House and the chairman of the subcommittee of the Judiciary Committee of the House as well as the opinion of the House that the substance of the amendment is presently the law of the land. And furthermore that the refusal of the amendment is based entirely and exclusively upon the opinion of the Judiciary Committee and of the House that the provisions of the amendment are now the law of the land and therefore that there is no necessity for a restatement of it in the bill.

MR. GRAHAM. Mr. Chairman, I rise in opposition to the pending amendment. I thank the gentleman from Mississippi for his fine compliment.

Mr. Chairman, it has always been my understanding that anything of a migratory nature, like migratory birds and such, must be settled by treaty or compact. This whole matter can be settled as between the States of Mississippi and Louisiana or between the States south thereof by a compact.

The argument we advanced in the other case applies here. This is limited to fish, but it is no different in our dealing with it than the other. We object to the amendment and we ask for its defeat.

MR. COLMER. Mr. Chairman, will the gentleman yield?

MR. GRAHAM. I yield to the gentleman from Mississippi.

MR. COLMER. The gentleman spoke of compacts. We entered into a compact down in these Southern States on the Gulf of Mexico here a couple of years ago and on the floor of this House I offered an amendment of similar import that would maintain the status quo, which was adopted and passed

unanimously by the House. That is what we are asking you to do here now — to have a restatement of that and a protection of our rights and to stop this squabbling.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi [MR. COLMER].

The question was taken; and the Chair being in doubt, the Committee divided and there were — ayes 25, noes 61.

So the amendment was rejected.